

ATTACHMENT C

CLEAN WATER ACT NPDES PROGRAM REVIEW

I. EXECUTIVE SUMMARY

The U.S. EPA received a petition, which as amended and supplemented, expressed concerns with Ohio environmental programs and requested that U.S. EPA withdraw Ohio's National Pollutant Discharge Elimination System (NPDES) program for the reasons set forth below. The following is a summary of the allegations contained in the petition and of U.S. EPA's responses.

A. ANTIDEGRADATION REQUIREMENTS

The petitioners allege that Ohio EPA has not been complying with the State's antidegradation requirements in siting landfills. Since U.S. EPA's NPDES program addresses the permitting of discharges from landfills and not the siting of landfills, our conclusion is that any alleged failure on the part of Ohio EPA to comply with Ohio's antidegradation requirements in siting landfills does not constitute cause to commence proceedings for withdrawal of Ohio's NPDES program.

B. ANTIDEGRADATION RULES

The petitioners allege that Ohio's antidegradation rules are deficient. State antidegradation policies are part of the State's water quality standards, and not a part of the State's NPDES program. Consequently, our conclusion is that any alleged deficiencies in Ohio's antidegradation rules does not constitute cause to commence proceedings for withdrawal of Ohio's NPDES program.

C. TOTAL MAXIMUM DAILY LOADS (TMDLS)

The petitioners allege that Ohio has failed to develop Total Maximum Daily Loads (TMDLs). Nothing in U.S. EPA's permitting regulations requires development of TMDLs. Instead, the requirements governing development of TMDLs are set forth at 40 C.F.R. Part 130. U.S. EPA's conclusion, therefore, is that Ohio's alleged failure to develop TMDLs does not constitute cause to commence proceedings for withdrawal of Ohio's NPDES program.

D. WATER QUALITY GUIDANCE FOR THE GREAT LAKES SYSTEM

The petitioners allege that Ohio EPA failed to adopt requirements consistent with the Water Quality Guidance for the Great Lakes System at 40 C.F.R. Part 132. On August 4, 2000, U.S. EPA determined that, with one exception pertaining to whole effluent toxicity ("WET"), Ohio had adopted requirements consistent with the guidance. U.S. EPA, therefore, specified that the WET procedures of the guidance apply in the Great Lakes Basin in Ohio and Ohio is using those procedures in making permitting decisions. Consequently, U.S. EPA's conclusion is that this

ATTACHMENT C

allegation does not constitute cause to commence proceedings for withdrawal of Ohio's NPDES program.

E. CONCENTRATED ANIMAL FEEDING OPERATIONS (CAFOS)

The petitioners allege that Ohio EPA has not been properly regulating concentrated animal feeding operations (CAFOs). By the time of the Draft Report,¹ however, Ohio EPA had committed in the context of its CWA Section 106 grant to require documented CAFO dischargers to apply for NPDES permits, to develop and issue appropriate NPDES permits for CAFOs, and to take appropriate CWA enforcement actions in response to CWA violations committed by CAFOs. Ohio EPA has taken these actions and public noticed its first NPDES permit for a CAFO, and is in the process of permit issuance.

F. CERTIFICATIONS UNDER SECTION 401 OF THE CLEAN WATER ACT FOR CERTAIN NON-NPDES PROJECTS

The petitioners allege that Ohio EPA has improperly granted certifications under Section 401 of the CWA that certain non-NPDES projects will comply with CWA requirements, including the State's water quality standards. These allegations pertain to matters not addressed by U.S. EPA's NPDES permitting regulations and so U.S. EPA's conclusion is that they do not constitute cause to commence proceedings for withdrawal of Ohio's NPDES program.

G. NPDES ENFORCEMENT PROGRAM

The petitioners allege that Ohio EPA's NPDES enforcement program is inadequate. In order to assess the adequacy of the State's enforcement program, U.S. EPA reviewed compliance files in four separate Ohio EPA district offices. U.S. EPA deemed the following the most significant enforcement program concerns identified during the review:

1. Surfacing Violations

At the time of the issuance of the Draft Report the Surface Water Information Management System (SWIMS) was not yet fully operational and able to detect violations. Thus, Ohio was unable to surface effluent violations in a timely manner (30 days after the report is due to the State as required under the Enforcement Management System). Ohio has resolved the outstanding issues with SWIMS. District and central office staff are now able to run real time reports and obtain compliance information.

¹U.S. EPA refers to the report, dated August 30, 2001, and made public on September 4, 2001, entitled "Draft Report on U.S. EPA Review of Ohio Environmental Programs" as the Draft Report.

ATTACHMENT C

2. PCS

At the time of the Draft Report, information regarding permit limits, violations and other types of information the State entered in the Permit Compliance System (PCS) was not accurate. This inaccuracy resulted in an unreliable quarterly noncompliance report. Ohio has resolved this issue, and the data it enters into PCS, the national database for tracking permit issuance, compliance and enforcement activities, is now timely and accurate.

3. Inspections

At the time of the Draft Report, U.S. EPA's preliminary conclusion was that there was not cause to commence proceedings for withdrawal of Ohio's NPDES program based on the inspection issue, although resources directed toward conducting inspections appeared to have diminished significantly over the past four fiscal years. Ohio EPA has now provided an acceptable inspection strategy. The strategy indicates that Ohio will be making a major shift in inspection resources and focusing inspection efforts on new priorities such as CAFOs, pretreatment industrial users, storm water, Combined Sewer Overflow and Sanitary Sewer Overflows, state permits to install, and minor NPDES permittees, in addition to the traditional majors. Ohio EPA is currently developing its list of inspection candidates which U.S. EPA will review shortly.

H. PRACTICAL QUANTIFICATION LEVELS (PQLS)

Although not raised in the petition, U.S. EPA investigated Ohio EPA's approach in addressing "practical quantification levels" (PQLs) situations where NPDES permits contain water quality based effluent limits (WQBELs) below the PQL. U.S. EPA believes that Ohio's approach for addressing WQBELs that are below the quantification level is generally consistent with federal requirements. U.S. EPA recommended that Ohio EPA clarify that, where there is a minimum level for analytical procedures specified in or approved under 40 C.F.R. Part 136, the minimum level shall constitute the quantification level for permits outside the Lake Erie basin. In many situations, Ohio EPA can implement U.S. EPA's recommendation. U.S. EPA will have to evaluate those situations where Ohio EPA cannot do so, on a case-by-case basis, and may object if the permit is not consistent with federal requirements. Because this issue was not raised by the petitioners, U.S. EPA is not considering this issue in the context of determining whether there is cause to commence withdrawal proceedings. However, U.S. EPA will continue to monitor Ohio EPA's use of PQLs to ensure that federal requirements are complied with.

II. ALLEGATIONS

ATTACHMENT C

The petition alleges that Ohio's NPDES program should be withdrawn for the following reasons:

1. Ohio EPA has not been complying with Ohio's antidegradation requirements in siting landfills.
2. Ohio's antidegradation rules are flawed.
3. Ohio EPA has failed to develop TMDLs.
4. Ohio failed to adopt requirements consistent with the Water Quality Guidance for the Great Lakes System (guidance) at 40 C.F.R. Part 132.
5. Ohio EPA has not been properly regulating concentrated animal feeding operations (CAFOs).
6. Ohio EPA's CWA Section 401 certification process is inadequate.
7. Ohio EPA's NPDES enforcement program is inadequate.

III. WITHDRAWAL CRITERIA

The criteria for withdrawal of state NPDES programs are at 40 C.F.R. § 123.63. The procedures for withdrawal of state NPDES programs are at 40 C.F.R. § 123.64. 40 C.F.R. § 123.64(b)(1) provides that:

The Administrator may order the commencement of withdrawal proceedings on his or her own initiative or in response to a petition from an interested person alleging failure of the state to comply with the requirements of this part as set forth in 123.63. The Administrator shall respond in writing to any petition to commence withdrawal proceedings [and] may conduct an informal investigation of the allegations in the petition to determine whether cause exists to commence [withdrawal] proceedings.

IV. PRELIMINARY FINDINGS IN THE DRAFT REPORT

A. ANTIDEGRADATION REQUIREMENTS

1. Allegation 1: The petition alleges that Ohio EPA has not been complying with the State's antidegradation requirements in siting landfills. The petition cites two examples: the Danis Clark Company Landfill and the Monsanto Bond Road Landfill.

ATTACHMENT C

2. Response: Nothing in U.S. EPA's NPDES program regulations addresses the siting of landfills. Instead, those regulations address permitting of discharges from such landfills. Consequently, U.S. EPA's preliminary finding was that any alleged failure on the part of Ohio EPA to comply with Ohio's antidegradation requirements in siting landfills would not constitute cause to commence proceedings for withdrawal of Ohio's NPDES program. The petition does not refer to any evidence of a widespread failure on Ohio EPA's part to comply with Ohio's antidegradation requirements in issuing NPDES permits. Of the two landfills cited in the petition, only the Monsanto Bond Road Landfill has received a NPDES permit, and members of the public have appealed that permit to the Ohio Environmental Appeals Board. That appeal is still pending. U.S. EPA notes that the Monsanto Bond Road Landfill permit only authorizes discharges of storm water that have not come into contact with the active portions of the landfill. Leachate from the landfill is collected on-site and removed by truck for treatment and disposal elsewhere. The petitioners fail to explain how they believe Ohio EPA should have acted differently under Ohio's antidegradation rules in issuing this permit. The petitioners also argue that Ohio EPA failed to comply with its antidegradation rules with regard to a Mill Creek channelization project. Once again, this situation does not involve NPDES permitting, and therefore does not constitute cause to commence withdrawal of Ohio's NPDES program.

In sum, U.S. EPA's preliminary finding was that petitioners' allegations regarding Ohio EPA's alleged failure to comply with antidegradation requirements did not constitute sufficient cause to commence proceedings for withdrawal of Ohio's NPDES program.

B. ANTIDegradation Rules

1. Allegation 2: The petitioners allege that there are problems with Ohio's antidegradation rules.
2. Response: State antidegradation policies are part of a state's water quality standards. *See* 40 C.F.R. § 131.12. They are not a part of a state's NPDES program. Consequently, U.S. EPA's preliminary finding was that any alleged deficiencies in Ohio's antidegradation rules would not constitute cause to commence proceedings for withdrawal of Ohio's NPDES program.

C. TMDLs

ATTACHMENT C

1. Allegation 3: The petitioners allege that Ohio EPA has failed to develop TMDLs.
2. Response: U.S. EPA's permitting regulations require that NPDES permits contain water quality based effluent limitations that "are consistent with the assumptions and requirements of any available wasteload allocation for the discharge prepared by the State and approved by U.S. EPA pursuant to 40 C.F.R. § 130.7." 40 C.F.R. § 122.44(d)(vii)(B). However, nothing in U.S. EPA's permitting regulations requires development of TMDLs. Instead, the requirements governing development of TMDLs are set forth at 40 C.F.R. Part 130. Therefore, U.S. EPA's preliminary finding was that Ohio's alleged failure to develop TMDLs would not constitute cause to commence proceedings for withdrawal of Ohio's NPDES program.

D. WATER QUALITY GUIDANCE (GUIDANCE)

1. Allegation 4: The petitioners allege that Ohio EPA failed to adopt requirements consistent with the Water Quality Guidance (guidance) for the Great Lakes System at 40 C.F.R. Part 132.
2. Response: Section 118(c)(2) of the CWA, 33 U.S.C. 1268, required that U.S. EPA publish water quality guidance for the Great Lakes System; that the Great Lakes States (including Ohio) adopt requirements consistent with that guidance; and that U.S. EPA promulgate the guidance requirements for those states that failed to adopt requirements consistent with the guidance. U.S. EPA, therefore, promulgated the guidance at 40 C.F.R. Part 132. At the time petitioners made this allegation, Ohio had in fact not made its submission to U.S. EPA of rules consistent with the guidance. However, Ohio subsequently did do so and, on August 4, 2000, U.S. EPA determined that, with one exception pertaining to determining reasonable potential for whole effluent toxicity ("WET"), Ohio had indeed adopted requirements consistent with the guidance. *See* 65 Fed. Reg. 47864. Therefore, in accordance with Section 118(c)(2), U.S. EPA specified that the WET reasonable potential procedures of the guidance apply in the Great Lakes Basin in Ohio. *Id.* Although Ohio has not adopted its own WET reasonable potential rules consistent with those in the guidance, Ohio is applying the guidance's WET procedures in making permitting decisions for discharges into the Great Lakes System. Because Ohio has adopted requirements consistent with all of the guidance other than the guidance's WET reasonable potential procedures, and Ohio is

ATTACHMENT C

using the guidance's WET reasonable potential procedures in making permitting decisions for discharges into the Great Lakes System, U.S. EPA's preliminary finding was that this allegation does not constitute sufficient cause to commence proceedings for withdrawal of Ohio's NPDES program.

E. ANIMAL FEEDING OPERATIONS (CAFOS)

1. Allegation 5: The petitioners allege that Ohio EPA has not been properly regulating concentrated animal feeding operations (CAFOs).
2. Response: At the time of the Draft Report Ohio EPA had committed in the context of its CWA Section 106 grant to require documented CAFO dischargers to apply for NPDES permits, to develop and issue appropriate NPDES permits for CAFOs, and to take appropriate CWA enforcement actions in response to CWA violations committed by CAFOs. Ohio EPA has since begun the process of conducting CAFO inspections, conducting enforcement and requiring NPDES permit applications for CAFOs. Ohio has also public noticed its first NPDES permit for a CAFO and is in the process of permit issuance. More specifically, for fiscal year 2003, Ohio EPA has committed to completing all animal feeding operation inspections with greater than 1000 animal units by October 1, 2003. The purpose of these inspections will be to determine whether the animal feeding operation is a concentrated animal feeding operation, i.e a CAFO as defined under the CWA. Ohio EPA has also committed to requiring those animal feeding operations which are CAFOs to apply for NPDES permits and to issue NPDES permits to those facilities. It is currently estimated that there are 144 facilities in the State with greater than 1000 animal units. As of the end of calendar year 2002, Ohio EPA had inspected 88 animal feeding operations. This leaves 57 animal feeding operations to be inspected in fiscal year 2003. As mentioned above, the Ohio EPA has committed to conducting inspections at these remaining facilities over 1000 animal units in order to determine if they are CAFOs and is committed to completing these inspections in its 106 program plan for fiscal year 2003.

Ohio EPA provided the following information in their Summary of Livestock Activities for federal fiscal year 2002: Ohio EPA currently has six complete NPDES permit applications in house and has issued one NPDES permit to a CAFO so far. Three more NPDES permits are under development. Ohio EPA has also issued a Directors Finding and Order to Buckeye Egg, requiring Buckeye Egg to apply for NPDES permits at all

ATTACHMENT C

eleven of its facilities.

During fiscal year 2002, Ohio EPA issued enforcement orders to four facilities. Ohio EPA also filed three sets of contempt charges against the Buckeye Egg Farm and was involved in three hearings. In April 2002, the Director of Ohio EPA proposed to revoke all of Buckeye Egg Farm's Permits to Install (PTIs). The revocation process was in progress at the time of the PTI authority transfer to the Ohio Department of Agriculture (ODA); therefore ODA had to restart the process under its regulations.

Additionally, during fiscal year 2003, Region 5 will conduct the following activities to insure that the State of Ohio continues to implement the NPDES permit program for CAFOs:

1. Continue to monitor the State's progress in conducting CAFO inspections under the 106 grant program.
2. Work with the State in revising its CAFO regulations which are expected to be effective in March 2003.
3. Work with the State to update its CAFO enforcement strategy.
4. Region 5 will conduct a reevaluation of Ohio EPA's NPDES compliance and enforcement program and CAFO program in fiscal year 2003.

F. CERTIFICATIONS UNDER SECTION 401 OF THE CLEAN WATER ACT

1. Allegation 6: The petitioners alleged that Ohio EPA has improperly granted certifications under Section 401 of the CWA that certain non-NPDES projects will comply CWA requirements, including the State's water quality standards.
2. Response: These allegations pertain to matters not addressed by U.S. EPA's NPDES permitting regulations and so U.S. EPA's preliminary finding was that they do not constitute cause to commence proceedings for withdrawal of Ohio's NPDES program.

G. NPDES ENFORCEMENT PROGRAM.

1. Allegation 7: Ohio EPA's NPDES enforcement program is inadequate.

ATTACHMENT C

2. Response: In order to assess the adequacy of the State's enforcement program, U.S. EPA reviewed compliance files in four separate Ohio EPA district offices. Several major enforcement program concerns were identified during the review.

- a. *Surfacing Violations*

At the time of the Draft Report, Ohio was unable to surface effluent violations in a timely manner (30 days after the report is due to the State as required under the Enforcement Management System). Effluent violations were surfaced by the State between 8 to 10 months after they occurred. This lag was caused by the Surface Water Information Management System (SWIMS) not being fully operational and able to detect violations.

- b. *Electronic Reporting*

Ohio used electronic reporting for discharge monitoring report (DMR) submissions. Federal regulations require discharge monitoring reports to be signed. The State had no approved signature process for the electronic DMR submissions. Field staff and permittees complained that the electronic system was not working properly in that data appeared to be changed by the system and that some value added networks, such as AOL, actually corrupted the transmission of reports. Field staff also indicated that some permittees were only reporting electronically. They stated that when the electronic reports were not successfully transmitted, permittees were refusing to provide paper copies, thus also impairing the State's ability to surface effluent violations.

- c. *Concentrated Animal Feeding Operation (CAFO)*

At the time of the Draft Report, this issue was largely resolved through 106 Program Plan negotiations. See IV. E., above.

- d. *PCS*

At the time of the Draft Report Information regarding permit limits, violations, and other types of information the State entered in the Permit Compliance System (PCS) was not accurate. This resulted in a very unreliable quarterly noncompliance report. PCS is the national database for tracking permit issuance, compliance and enforcement activities. In addition, the State was not entering all inspections and enforcement actions into PCS.

- e. *Formal Enforcement Actions*

ATTACHMENT C

The Draft Report contained an attached chart which indicated that there had been a significant reduction in formal enforcement actions initiated by Ohio EPA based on information reported in the Permit Compliance System.

f. *Inspections*

The Draft Report stated that Ohio EPA resources directed toward conducting inspections appeared to have diminished significantly over the past four fiscal years. The Draft Report further pointed out that this trend may have been due in part to the agreed strategy between U.S. EPA and the State that resources would be devoted to reducing the permit backlog.

g. *NPDES Permits*

The Draft Report stated that the reasons for the NPDES permit backlog in Ohio fell largely into three categories: resources/staffing, workload/priorities and data systems.

Resources/Staffing: Modeling and permit writing staff levels had declined over the last several years, resulting in a decline in the number of minor and major permits issued. Inability to replace staff and the State's adoption and implementation of requirements consistent with the Water Quality Guidance for the Great Lakes System at 40 C.F.R. Part 132 (which resulted in some permitting and modeling staff being shifted to work on the new rules) contributed to the problem.

Workload/Priorities: The new Water Quality Guidance rules require a greater resource expenditure to renew permits. A priority shift to focus on watershed problems also resulted in decreased priority for minor permit renewals. In addition, permitting essentially stopped in January 1999 for conversion of data to the new electronic permitting system, which had an extremely steep learning curve. The modeling unit was unable to provide enough Permit Support Documents (PSDs) each year to issue 80 majors per year. Further, major permits and some minor permits could not be "rolled over" because of required modeling and potential evaluations under the new rules.

Data Systems: It was pointed out in the Draft Report that the SWIMS system will take time to work out "bugs" and for staff to learn the system.

h. *PQLs*

U.S. EPA investigated one NPDES issue not raised by the petitioners. Specifically, U.S. EPA investigated Ohio EPA's approach to addressing "practical quantification levels" (PQLs) in situations where NPDES permits contain water quality based effluent limits (WQBELs) below the PQL.

ATTACHMENT C

ORC 6111.13(A)(2) defines PQL as:

a concentration that is five times the method detection limit for the most sensitive available analytical procedure currently approved under 40 C.F.R. Part 136 for a pollutant unless the director of environmental protection, by rules adopted in accordance with Chapter 119 of the Revised Code, establishes a different [PQL] for the pollutant that is consistent with and no more stringent than the appropriate national consensus standard or other generally accepted standard.

ORC 6111.13(B) provides:

Notwithstanding any other provisions of this chapter to the contrary, and until the director has adopted rules specifying a different basis for determining compliance consistent with and no more stringent than an appropriate national consensus standard or other generally accepted standard, if a discharge limit is set below the [PQL] for a particular parameter, any value reported at or below the [PQL] shall be considered to be in compliance with that limit.

Ohio EPA adopted the following regulations at OAC 3745-33-07(C):

(C) WQBELS below quantification levels. This paragraph shall apply when a water quality based effluent limit for a pollutant is calculated to be less than the quantification level.

(1) The director shall designate as the limit in the NPDES permit the WQBEL exactly as calculated;

(2) Analytical methods, quantification and compliance levels.

(a) The permittee shall use the most sensitive analytical procedure currently approved under 40 C.F.R. § 136 for each individual pollutant.

. . . .

(c) For the purpose of assessing compliance with an NPDES permit, any value reported below the quantification level shall be considered in compliance with the effluent limit. For the purpose of calculating compliance with average limitations contained in an NPDES permit, compliance shall be determined by taking the arithmetic mean of reported values for a given reporting period and comparing that mean to the appropriate average permit limitation, using zero for any values detected at concentrations less than the quantification level. Arithmetic mean values that are less than or equal to the permit limitation shall be considered in compliance with the effluent limit.

ATTACHMENT C

(d) The quantification level is defined as the practical quantification level except, for discharges to the Lake Erie basin, the quantification level shall be the minimum level for analytical procedures in 40 C.F.R.136.

(e) The director may establish PQLs for a pollutant with a method listed in 40 C.F.R. 136 or, if no analytical method for the pollutant has been promulgated under 40 C.F.R. 136, the director may establish a PQL for the pollutant using an appropriate consensus standard or other generally accepted standard for the analytical method; if no such standard exists, the director may establish a PQL in the permit based on MDLs determined using the procedures in 40 C.F.R. 136 appendix B.

(f) Discharge-specific quantification levels. Permittees may apply for discharge-specific quantification levels. Discharge-specific quantification levels shall be calculated using the procedures provided in 40 C.F.R. 136 appendix B.

U.S. EPA believes that Ohio's approach for addressing WQBELs that are below the quantification level is generally consistent with federal requirements. U.S. EPA recommended in the Draft Report that Ohio EPA clarify that, where there is a minimum level for analytical procedures specified in or approved under 40 C.F.R. Part 136, the minimum level shall constitute the quantification level for permits outside the Lake Erie basin. U.S. EPA believes that any "minimum level" that has been specified in or approved under 40 C.F.R. Part 136 would be consistent with "an appropriate consensus standard or other generally accepted standard."

In many situations, Ohio EPA can implement U.S. EPA's recommendation. U.S. EPA will have to evaluate those situations where Ohio EPA cannot do so, on a case-by-case basis, and may object if the permit is not consistent with federal requirements. Because this issue was not raised by the petitioners, U.S. EPA is not considering this issue in the context of determining whether there is cause to commence withdrawal proceedings. However, U.S. EPA will continue to monitor Ohio EPA's use of PQLs to ensure that federal requirements are complied with.

V. SUMMARY OF COMMENTS ON DRAFT REPORT

There were numerous comments submitted during the public comment period on the Draft Report disagreeing with U.S. EPA's preliminary findings. U.S. EPA has considered those comments in reaching the Final Report Findings described below. The comments and U.S. EPA's responses to those comments are set forth in the Responsiveness Summary.

ATTACHMENT C

VI. FINAL REPORT FINDINGS

U.S. EPA's findings with respect to the petition to withdraw Ohio's NPDES program have not changed from those in the Draft Report.

VII. PROGRAM IMPROVEMENTS

The Draft Report suggested a number of program improvements that Ohio EPA has since effected as follows:

A. SWIMS

The Draft Report asked the State to provide an expedited schedule for resolving outstanding issues with SWIMS so that effluent violations can be surfaced for appropriate enforcement in a timely manner, i.e., within 30 days of the date that DMRs are due to the State. It also indicated that the State should provide a plan and schedule for resolving the remaining problems with the electronic reporting of DMRs and correcting the limit records in PCS.

On March 5 and 6, 2002, U.S. EPA met with Ohio EPA staff to discuss, among other issues, suggested program improvements set forth in the Draft Report. During the March meeting, Ohio EPA was able to demonstrate that the problems with the SWIMS software had been solved. The state can now surface effluent violations appropriately, and the SWIMS compliance routine now runs on a nightly basis. District and Central Office staff are now able to run real time reports and obtain compliance information.

Ohio EPA has resolved the problems with electronic reporting set forth in the Draft Report. Ohio EPA has implemented a new e-mail reply system for each electronic submission it receives. Ohio EPA posts the data received on the divisions web page at <http://www.epa.state.oh.us/dsw/swims/swimzips.html>. Further, Ohio EPA has in place a Memorandum of Agreement with each discharger that submits electronic reports that requires the permittee to maintain copies of the monitoring reports on site and available during inspections.

B. INSPECTION STRATEGY

The Draft Report asked the State to develop and receive approval for its inspection strategy, and indicated that the strategy should address how long the State would continue diverting resources from compliance inspections to other activities. The Draft Report also asked the State to consider increasing resources devoted to this activity in view of the problems noted above with SWIMS and the reported problems with electronic reporting. U.S. EPA preliminarily concluded that if Ohio EPA made the commitment regarding SWIMS described above and addressed this

ATTACHMENT C

issue, there is not sufficient cause to commence proceedings for withdrawal of Ohio's NPDES program based on the inspection issue.

At the March 2002 meeting, Ohio EPA set forth an acceptable inspection strategy. The state indicated that it will shift inspection resources and focus inspection efforts on new priorities, such as CAFOs, pretreatment industrial users, storm water, Combined Sewer Overflows and Sanitary Sewer Overflows, state permits to install, and minor NPDES permittees, in addition to the traditional majors. Ohio EPA is currently developing its list of inspection candidates and U.S. EPA should review it shortly.

C. CONCENTRATED ANIMAL FEEDING OPERATIONS (CAFOs)

Regarding CAFO program issues, Ohio EPA now requires NPDES permit applications for CAFOs, and has begun the process of conducting CAFO inspections and conducting appropriate enforcement responses. The state has also public noticed its first NPDES permit for a CAFO and is in the process of permit issuance. However, due to resources which have had to be devoted to the enforcement of Buckeye Egg, the state is behind in meeting its inspection commitment for CAFOs.

VII. CONCLUSION

For the reasons set forth above, in the Draft Report and in the Responsiveness Summary, the petition has not raised sufficient cause to warrant commencing proceedings to withdraw Ohio's NPDES program.

ATTACHMENT C

Appendix: Ohio EPA's Water Program Commitments

Commitment	Due Date	Date Completed	Status and Comments
Implement regulatory program for Concentrated Animal Feeding Operations	Ongoing	Ongoing	OEPA has begun the process of regulating CAFOs. They have inspected 88 of the 148 animal feeding operations with greater than 1000 animal units and expect to complete the balance by the end of the fiscal year. OEPA has issued its first NPDES permit to a CAFO and is working on more and has taken enforcement action in several cases to require NPDES permits.
Submit Ohio's Inspection Strategy	Ongoing	Ongoing	OEPA submitted its inspection strategy in Feb, 2002. This is a process which is updated annually.
Develop a computer program which access SWIMS data so district offices can surface violations in a timely fashion.			This was completed in Feb 2002.
Maintain current limit information in the national Permit Compliance System (PCS)	Ongoing	Ongoing	OEPA has improved the accuracy of limit information in PCS. According to USEPA headquarters currently 85% of the major dischargers have current limits in PCS. Region 5 will continue to work with OEPA to improve this level further.